



# Punjab Government Gazette

*Published by Authority*

No. 35 ]

CHANDIGARH, FRIDAY, AUGUST 28, 2020 (BHADRA 6, 1942 SAKA)

## PART I

Punjab Government Notifications and Orders

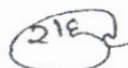
**भारत निर्वाचन आयोग**  
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001

तारीख :- 13 अगस्त, 2020  
22 श्रावण 1942 (शक)

### अधिसूचना

सं० 82/पंजाब-वि०स०/(1/2017) /2020 लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में भारत निर्वाचन आयोग 2019 की निर्वाचन अर्जी संख्या 1/2017 में पंजाब व हरियाणा उच्च न्यायालय, चंडीगढ़ के तारीख 26 सितम्बर, 2019 के निर्णय को एतद्वारा प्रकाशित करता है।

(संलग्न निर्णय यहाँ छापे) .

आदेश से,  
  
(राहुल शर्मा)  
सचिव  
भारत निर्वाचन आयोग

**SECRETARIAT OF THE  
ELECTION COMMISSION OF INDIA**

Nirvachan Sadan,  
Ashoka Road,  
New Delhi – 110 001.

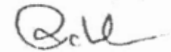
Dated:- 13<sup>th</sup> August, 2020  
22 Shravana, 1945 (SAKA)

**NOTIFICATION**

No. 82/PB-LA/(1/2017)/2020 :- In pursuance of Section 106 of the Representation of People Act, 1951(43 of 1951), the Election Commission of India hereby publishes judgments dated 26<sup>th</sup> September, 2019 of the High Court of Punjab & Haryana at Chandigarh in Election Petition No. 1 of 2017.

(HERE PRINT THE JUDGEMENT ATTACHED)

By order,



(RAHUL SHARMA)  
SECRETARY  
ELECTION COMMISSION OF INDIA

CM No.8-E of 2018 in/and EP No.1 of 2017IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARHCM No.8-E of 2018 in/and EP No.1 of 2017

Date of Decision: - September 26, 2019

Deepinder Singh Dhillon

...Petitioner

Vs.

Narinder Kumar Sharma &amp; Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Gulshan Sharma, Advocate for the Petitioner.

Mr. S.P.Jain, Sr. Adv. with Mr.Dheeraj Jain & Mr.Vijay  
Kumar Chaudhary, Advocates for Applicant/Respondent-1.SUDIP AHLUWALIA, J.

This is an Application filed by the Applicant/Respondent No.1 under Order VI Rule 10 read with Order VII Rule 11 and Section 151 of the Code of Civil Procedure.

2. Background of the matter is that election of the Applicant/Respondent No.1 as a Member of Punjab Legislative Assembly from 112-Dera Bassi Assembly Constituency, which was declared on 11.3.2017, was challenged by the Petitioner/non-Applicant in the main Election Petition under Sections 80 to 83 read with Sections 100 and 101 of the Representation of the People Act, 1951 (for short 'the Act of 1951') alongwith its relevant enabling provisions.

3. The Petition was challenged by the Applicant/Respondent No.1 who filed his Written Statement, on the basis of which, seven issues were framed on 12.1.2018, out of which, issue No.4 which sought to impeach the Election Petition as being non-maintainable as it was allegedly in violation of Section 81 of the Act of 1951 by not having been personally presented by the Petitioner/non-Applicant, was taken

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up as the preliminary issue. The said issue was however, decided by a Coordinate Bench of this Court in favour of the Petitioner on 7.8.2018 and the matter then posted for evidence on 24.8.2018. The Applicant/Respondent thereafter filed a Review Application against the decision on the preliminary issue No.4, which was then dismissed by the Coordinate Bench on 14.9.2018. In the meantime, the present Application was filed by the Applicant/Respondent on 12.9.2018, which has since come up for consideration before this Court.

4. The sum and substance of the present Application in a nutshell is that the facts/allegations as narrated in Paras 7 to 11 of the original Election Petition, are untenable and liable to be struck out under Order VI Rule 16 of the CPC and once that is done, the Election Petition itself would show no cause of action whatsoever for seeking election of the Applicant to be set aside.

5. The Application has been opposed at the outset on behalf of Petitioner, who contends that it is a motivated device to delay the trial in the case after the issues have already been framed and even the preliminary Issue No.4 has been decided. But this contention is not convincing because, as held by the Supreme Court in 'R.K.Roja Vs. U.S. Rayudu and Another.' 2016(14) S.C.C. 275 -

*"5. Once an application is filed under Order 7 Rule 11 CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint (Election Petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing*

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*his written statement. In case, the application is rejected, the defendant is entitled to file his written statement thereafter (See Saleem Bhai and others v. State of Maharashtra (2003) 1 SCC 557). But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial court."*

6. Again in 'Samar Singh Vs. Kedar Nath alias K.N. Singh and others' 1987 (Supp) Supreme Court Cases 663 specifically in the matter of an Election Petition. In which it was held by the Apex Court that, "Election Petition can be dismissed under Order VII Rule 11 CPC even after framing of issues if it does not disclose a cause of action." In this view of the matter, the present Application cannot be rejected outright at this stage and is therefore, to be considered on merits.

7. In this backdrop, clearly the averments made in the impugned Paras 7 to 11 of the original Election Petition do call for consideration and analysis so as to determine whether or not the same are liable to be struck out under Order VI Rule 16 of the CPC, and whether consequently the Election Petition itself is liable to be rejected under Order VII Rule 11 of the CPC read with other relevant provisions of the Act of 1951. To this end therefore, this Court now proceeds on to consider the specific averments made in the aforesaid impugned Paras 7 to 11 of the original Election Petition, which are set out below -

"7. That whereas, as a matter of fact, there were dues to the tune of Rs.35,20,876/- (Rs. Thirty Five Lacs Twenty Thousands Eight Hundreds and Seventy Six only) towards the Executive

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Engineer, Punjab State Power Corporation Ltd. (PSPCL), Zirakpur, Tehsil Derabassi District SAS Nagar Mohali (Pb.) for the VN Sharma Builders Private Limited, Charanji Enclave P.O. Lohgerh NAC, Zirakpur District SAS Nagar Mohali, Punjab of which the respondent No.1 is a active Director/owner. Thus, the respondent No.1 has filed an false affidavit before the Returning Officer so he has committed a corrupt practice as per section 123 of the Representation of People Act, 1951, so on this score, his election to the 112 Derabassi Assembly Constituency is required to be set aside and the petitioner being the next highest vote catcher be declared elected under Section 101 of the Representation of People Act, 1951. The relevant record of the above mentioned company of the respondent No.1 would be required to be summoned by this Hon'ble Court at the time of evidence to prove the point.

8. That it is pertinent to mention here that the two projects i.e. one Savitri Green VIP Road, Zirakpur and Savitri Green II, Gazipur road, Zirakpur are also owned by the company i.e. V. N. Sharma Builders Pvt. Ltd. of which the respondent No.1 is active owner/Director/promoter and it is particularly mentioned here that on the date of filing of the nomination papers by the respondent No.1, the Savitri Green, VIP Road, Zirakpur owed Rs.3.05 crores (Rupees Four Crores and Five Lacs approximately) and the Savitri Green-II, Gazipur road, Zirakpur owed 4.85 Crores (Rupees Four Crores and Eighty Five Lacs approximately) as building application fee and development charges towards the Nagar Council, Zirakpur, Dist. SAS Nagar, Mohali. This clearly proves that the respondent No.1 while filing his nomination papers has concealed this fact of dues towards the Govt. agencies therefore, he has committed an corrupt practice as has been enshrined under the provisions of section 123 of the Representation of People Act, 1951. The relevant record of the case would be required to be summoned by this Hon'ble Court from the concerned authorities.
9. That the respondent No.1 has indulged into corrupt practice by accepting the votes of the followers of Dera Sacha Sauda

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*of District Sirsa (Haryana) who had made appeal to its followers to vote for the candidates of Shiromani Akali Dal. The Dera Sacha Sauda has about 13500 (Thirteen thousand and five hundreds approximately) votes of its followers in the 112 Derabassi Assembly Constituency and in this way this act of the respondent No.1 in accepting the votes of followers of Dera Sacha Sauda, Sirsa has indulged into corrupt practice as per section 123 of the Representation of People Act, 1951; hence, his election to the 112 Derabassi Assembly Constituency deserves to be set aside on this ground also.*

10. *That the nomination papers of the respondent No.1 have been wrongly accepted by the Returning Officer which has materially affected the result of the 112-Derabassi Assembly Constituency, Punjab.*
11. *That the election of the respondent No.1 is not qualified to be chosen as a member of Punjab Vidhan Sabha from 112-Derabassi Assembly Constituency, Punjab."*

8. At the outset, it may be mentioned that Ld. Counsel for the Petitioner with reference to Para 9 above, has in all fairness accepted before this Court that there cannot be a tangible case of corrupt practice against the Applicant/Respondent simply on account of the fact that he accepted the votes of the followers of Dera Sacha Sauda of District Sirsa (Haryana), who had appealed to its followers to vote for the candidates of Shiromani Akali Dal. In fact, in the entire Para 9 reproduced above, there is no indication whatsoever that the Respondent/Applicant even had any contact with the 'Dera Sacha Sauda' or had adopted any kind of corrupt practice for the purpose of illegally obtaining the votes of its followers. With regard to Paras 10 and 11 also, Ld. counsel for Petitioner/non-Applicant has again conceded in all fairness that unless the candidature of the Applicant can be shown to be vitiated on account of the allegations and reasons

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mentioned in the preceding Paras 7 and 8, the contention that his nomination papers were wrongly accepted by the Returning Officer, or that he is not qualified to be chosen as a Member of the Punjab Vidhan Sabha cannot hold water. As such, Ld. counsel for non-Applicant/Petitioner submitted candidly before this Court that he has no objection to deletion/non-consideration of the contents of Para 9 of the original Petition, nor can any positive finding on the contention in the succeeding Paras 10 & 11 be arrived at, unless and until the allegations made in the preceding Paras 7 & 8 disclose tangible grounds to hold the candidature of the Respondent/Applicant as vitiated.

9. This Court therefore, proceeds on to scrutinize whether the allegations in Paras 7 & 8 of the original Election Petition, which are reproduced in earlier Para 4, do make out any grounds to hold that the Respondent/Applicant had filed a false affidavit before the Returning Officer by way of concealing any material facts regarding his outstanding dues towards the State/Public authorities, which amounts to a corrupt practice, assuming that the facts narrated therein by the Petitioner/non-Applicant are true.

10. For this purpose, it is to be noted first of all that the allegations of the Petitioner were that the Applicant/Respondent is an active Director/owner of the Company 'V.N.Sharma Builders Private Limited', which had dues to the tune of Rs.35,20,876/- (Thirty five Lacs Twenty Thousand Eight Hundred Seventy Six Only) only towards the Executive Engineer, Punjab State Power Corporation Limited (PSPCL), Zirakpur, and which he did not disclose in his



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affidavit. The other allegation in the original Petition was that the Applicant's Company 'V.N.Sharma Builders Private Limited', of which he is an active owner/Director/Promoter owned two Projects namely, 'Savitri Green VIP Road, Zirakpur' and 'Savitri Green-II, Gazipur Road, Zirakpur, which on the date of filing of nomination papers by the Applicant owed Rs.4.05 Crores (Four Crores and Five Lacs Only) and Rs.4.85 Crores (Four Crores and Eighty Five Lacs Only) respectively as Building Application Fees, and Development Charges towards the Nagar Council, Zirakpur, District S.A.S. Nagar, Mohali, which liabilities he again failed to disclose in his affidavit before the Returning Officer, on account of which, he had indulged in corrupt practices as per Section 123 of the Act of 1951.

11. The contention of the Applicant/Respondent on the other hand is that the alleged dues mentioned in the original Petition are those of Private Limited Companies only, and not of the Respondent personally; that a Private Limited Company is a separate legal entity from an individual on account of which, the dues, if any of such Company are not required to be mentioned in the affidavit filed by a candidate who happens to be otherwise associated with the Company as its Director or in any other capacity, and that the requirement of law is to mention only the personal liabilities of the candidate, his or her spouse and his dependents. It has been further urged on behalf of the Applicant that even the requisite application Form-26 did not contain any column regarding such liabilities, nor any of the prescribed columns in the format of affidavit was left blank or incomplete by the Applicant, which could have had the effect of

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vitiating his candidature. From the side of Petitioner/non-Applicant, photo copies of the affidavit furnished not only by the Petitioner himself but even the Respondent/Applicant were tendered in Court on 11.4.2019. This Court has seen the relevant Column No.8 of the same, which deals with liability/dues of the prospective candidate towards Public Financial Institutions and Government, and the relevant columns are seen to pertain only to the candidate himself his/her spouse and the dependents. In fact, the format of the material Column No.8 of the requisite affidavit is set out as follows -

S. No	Description	Self	Spouse(s)	Dependent-1	Dependent-2

12. Now it is a matter of record that the Applicant/Respondent in his affidavit had not mentioned anything about the liabilities of the Company 'V.N.Sharma Builders Private Limited' towards PSPCL or of the two Projects owned by the said Company towards the Nagar Council, Zirakpur, and the contention of the Applicant in this regard is that he was never under any obligation to refer to such liabilities of those Private Limited Companies, which are distinct and separate legal entities from the candidate himself.

13. Therefore, the moot point to be considered at this juncture boils down to a question as to whether "*Liabilities/dues of a Company in which a candidate as a Director are liable to be treated as his personal liabilities for the purpose of disclosure of the same in the prescribed affidavit in Form No.26*", and this question was also referred to by the Court in its proceedings dated 11.4.2019. Ld. counsel for Petitioner/non-Applicant was however, unable to place

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any citation directly on this point, but had referred to certain decisions relying on which it was sought to be argued that the Applicant/Respondent in any case was obliged to disclose the liabilities of the Companies of which he was a Director, in his affidavit to the Returning Officer. Those decisions are taken up for consideration in the succeeding Paragraphs.

14. The principal reliance of the Petitioner is on the celebrated decision in 'Union of India Vs. Association For Democratic Reforms & Anr.' 2002(2) R.C.R. (Civil) 640, in which, the Supreme Court while holding that voters have a right to know certain relevant particulars of the candidates, observed *inter alia* -

*"47. To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:*

*1. The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word 'elections' is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.*

*2. The limitation on plenary character of power is when the Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Article 324 is a reservoir of power to*

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*act for the avowed purpose of having free and fair election. Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions, Commission can fill the vacuum till there is legislation on the subject. In Kanhiya Lal Omar's case, the Court construed the expressions "superintendence, direction and control" i: Article 324(1) and held that a direction may mean an order issued to a particular individual or a precept which may have to follow and it may be a specific or a general order and such phrase should be construed liberally empowering the election commission to issue such orders.*

*3. The word "elections" includes the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the process of choosing a candidate. Fair election contemplates disclosure by the candidate of his past including the assets held by him so as to give a proper choice to the candidate according to his thinking and opinion. As stated*

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earlier, in Common Cause case (supra), the Court dealt with a contention that elections in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election. If on affidavit a candidate is required to disclose the assets held by him at the time of election, voter can decide whether he could be re-elected even in case where he has collected tons of money.

Presuming, as contended by the learned senior counsel Mr. Ashwini Kumar, that this condition may not be much effective for breaking a vicious circle which has polluted the basic democracy in the country as the amount would be unaccounted. May be true, still this would have its own effect as a step-in-aid and voters may not elect law-breakers as law-makers and some flowers of democracy may blossom.

4. To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate

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*who seeks election or re- election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.*

*5. The right to get information in democracy is recognised all throughout and it is natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant of Civil and Political Rights which is as under:-*

*"(1) Everyone shall have the right to hold opinions without interference.*

*(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."*

*6. Cumulative reading of plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the*

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*Constitution to issue necessary directions to the Executive to subserve public interest.*

*7. Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voters' speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is must. Voter's (little man - citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basis for survival of democracy. The little man may think over before making his choice of electing law breakers as law makers. In this view of the matter, it cannot be said that the directions issued by the High Court are unjustified or beyond its jurisdiction. However, considering the submissions made by the learned counsel for the parties at the time of hearing of this matter, the said directions are modified as stated below."*

15. Thereafter, the Apex Court proceeded on to pass a direction upon Election Commission of India to call for information on affidavit from each candidate seeking election to the Parliament or a State Legislation. The relevant directions contained in Para 48 of the Judgment are set out below -

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*"48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:*

*(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past - if any, whether he is punished with imprisonment or fine ?*

*(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is frameu or cognizance is taken by the Court of law. If so, the details thereof.*

*(3) The assets (immovable, movable, bank balances etc.) of a candidate and of his/her spouse and that of dependents.*

*(4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues.*

*(5) The educational qualifications of the candidate."*



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16. The emphasis from the side of Petitioner is on the 4<sup>th</sup> Item covered in the directions of the Supreme Court in Para 48 of its Judgment reproduced above i.e. the requirement to disclose liabilities of candidate, particularly whether there are any over dues of any public financial institution or Government dues. But as already seen, the relevant Column No.8 of the Affidavit in Form-26 only obligates the disclosure of the candidate's own (personal) dues and liabilities and those of his spouse(s) as well as his dependents which essentially means his wards or other family members, who are dependents upon him. There is no specific Column requiring disclosure of liabilities of the candidate in his capacity as Director in any Company or Corporation. Nevertheless, the submission raised on behalf of Petitioner in this regard is that the moral aspect to the sanctity of the Election Process would certainly have obligated the Respondent to disclose the liabilities of the Company, of which, he is an 'active' Director.

17. To further support his contention, Ld. Counsel for Petitioner, has thereafter relied upon the decision of Apex Court in '**Kisan Shankar Kathore Vs. Arun Dattatray Sawant and others**' 2014 (14) SCC 162 wherein the decision of High Court setting aside the election of a successful candidate in the Legislative Assembly from 56, Ambarnath Constituency, Thane District, Maharashtra was upheld by the Supreme Court, since he had failed to disclose about existence of the following assets and liabilities of himself and his family members to the following effect -

*"a) Non-disclosure of dues to Maharashtra State*

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*Electricity Board in respect of two service connections held by him amounting to Rs.79,200/- and Rs.66,250/-.*

*b) The appellant failed to disclose the ownership of Bungalow No. 866 and the taxes dues thereof amounting to Rs.3,445/- owned by his wife.*

*c) The appellant failed to disclose the particulars of the vehicle MH-05-AC-55 owned by the wife.*

*d) The appellant is guilty of non-disclosure of property owned by firm Padmavati Developers of which the appellant is a partner, which owns two plots of lands measuring 1313 sq.mtrs. and 1292 sq.mts. in Survey No. 48, Hissa No. 9 of Mouze Kalyan, Taluka Ambarnath, District Thane, Maharashtra "*

The relevant observations of the Apex Court in dismissing the Appeal are set out below -

*"35. Even if it is so, in respect of the aforesaid aspects, on other non-disclosures, the case of the appellant has failed to fail. We find clear case of non-disclosure of bungalow No. 866 in the name of the appellant's wife, which is a substantial lapse. So is the case about the non-disclosure of vehicle in the name of appellant's wife. Likewise, non-disclosure of the appellant's interest/share in the partnership firm is a very serious and major lapse. On all these aspects, we find that the defence/explanation furnished by the appellant does not inspire any confidence. It is simply an afterthought*

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*attempt to wriggle out of the material lapse on the part of the appellant in not disclosing the required information, which was substantial. We, therefore, are of the view that in the affidavits given by the appellant along with the nomination form, material information about the assets was not disclosed and, therefore, it is not possible to accept the argument of the appellant that information contained in the affidavits be treated as sufficient/substantial compliance.*

*36. We have already reproduced above the relevant portions of judgments in the cases of Association for Democratic Reforms and People's Union for Civil Liberties and the guidelines issued by the Election Commission pursuant thereto. A conjoint and combined reading thereof clearly establishes that the main reason for issuing directions by this Court and guidelines by the Election Commission pursuant thereto is that the citizens have fundamental right under Article 19(1)(a) of the Constitution of India to know about the candidates contesting the elections and this is the primary reason that casts a solemn obligation on these candidates to furnish information regarding the criminal antecedents, educational qualifications and assets held by the candidate, his spouse and dependent children. It is on that basis that not only Election Commission has issued guidelines, but also prepared formats in which the*

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*affidavits are to be filed. As a fortiori, it follows that if the required information as per the said format in respect of the assets of the candidate, his wife and dependent children is not given, it would amount to suppression/non-disclosure."*

18. In the opinion of this Court, the decision in 'Kisan Shankar Kathore' (supra) is distinguishable from the facts of the present case for the simple reason that non-disclosure of the dues towards Maharashtra State Electricity Board in respect of two service connections pertained to the candidate personally, since the connections stood in his own name. The failure to disclose about ownership of Bangalow No.866 and the taxes dues thereof as also Vehicle No.MH-05-AC-35, were also a clear case of suppression of the relevant particulars because undoubtedly, wife of the Petitioner is specifically covered in the Column of 'spouse(s)' in the concerned Para 8 of Form- 26. Lastly, the Appellant was himself a Partner in the Firm Padmavati Developers whose assets were not disclosed. It goes without saying that a term 'Partner' necessarily connotes a direct and personal interest of the person concerned who is a Partner in the Partnership Firm, since he is routinely entitled to his proportionate share of the profits or losses of the Firm, along with his other Partners, unless on account of some special and rather unlikely arrangement it is ensured that he has no personal stake whatsoever in the assets or profits of the Firm in spite of being a Partner. But the Director of a Company cannot be treated to be equivalent of a Partnership Firm because his status as such does not automatically

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render him liable to bear the Company's liabilities personally or automatically receive any Dividend from its profits by virtue of being such Director in his personal capacity, unless he is himself a shareholder of the Company. The 'moral' force of the argument thus raised on behalf of Petitioner that being a Director, it was obligatory on the part of the Respondent to disclose liabilities of the Companies towards the Government or Public Institution does not convince the Court, more so on account of certain subsequent developments in the matter of enlargement of the particulars required in the affidavit of a candidate in Form-26, which is taken up for consideration in the following Paragraph:

19. Ld. Counsel for Respondent has drawn attention of the Court to the subsequent Notification No.H-11019/04/2018-Leg.II Dated 10.10.2018 issued by the Government of India, Ministry of Law and Justice are contained certain additions to the Form-26 by way of adding Item Nos.(9A) and (9B) of the said Format, which are set out as below -

**(9A) Details of sources of income:**

(a) Self.....

(b) Spouse.....

(c) Source of income, if any, of dependents.....

**(9B) Contracts with appropriate Government and any public company or companies**

(a) details of contracts entered by the candidate.....

(b) details of contracts entered into by spouse.....

(c) details of contracts entered into by dependents.....

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(d) details of contracts entered into by Hindu Undivided Family or trust in which the candidate or spouse or dependents have interest.....

(e) details of contracts entered into by Partnership Firms in which candidate or spouse or dependents are partners.....

(f) Details of contracts entered into by private companies in which candidate or spouse or dependents have share..... "

20. For the aforesaid modified Form-26, it is thus seen that certain additional particulars regarding sources of income of a candidate with his spouse/dependents as also details pertaining to his contracts with the Government or any Public Company or Companies are now required to be furnished, although even these particulars do not directly specify disclosure of any outstanding liabilities of a Company, with which the candidate or his/her spouse/dependents may be associated. Yet it may be argued that the term 'Details of Contracts' would be large enough to cover the same. But even in such eventuality, it is to be noted this new requirement of declaration of contracts with the Government or Public Company or Companies has been introduced only after 10.10.2018, and was admittedly not in existence at the time the Respondent was elected i.e. in March, 2017. By any stretch of imagination therefore, at this stage, he cannot be penalized for not having disclosed any such particulars, which were never required of him in the specific Format, which he was obligated to do on affidavit at the relevant time in 2017. Such an interpretation

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based on the principle of 'morality' so emphatically stressed on behalf of Petitioner in the opinion of the Court is not called for, as the same would not only have the effect of violating the basic canons of jurisprudence that a person cannot be penalized retrospectively for not disclosure of any particulars, which were never required to be disclosed at the relevant time. Such a course would also have the effect of overreaching the competent authorities i.e. Election Commission, or the Central Government, who were otherwise authorized to incorporate or modify Form-26 with the evolution of time.

21. For the aforesaid reasons, this Court finds no tangible cause of action for the Petitioner to challenge the Respondent's election of 2017 on the alleged ground of non-disclosure of his liabilities towards the Government or Public Institution, which were actually liabilities of the Company/Companies, with which, he was associated only in his capacity as Director and which he was not obligated to disclose in accordance with specific Format in force at the relevant time. Consequently, the Respondent's Application under Order VI Rule 16 read with Order VII Rule 11 and Section 151 CPC is allowed and the Election Petition stands dismissed.

*Sudip*  
(SUDIP AHLUWALIA)  
JUDGE

September 26, 2019  
AS

1. Whether speaking/reasoned ?

Yes/No

2. Whether reportable ?

Yes/No

*Ravi*  
*28/10/19*  
Superintendent, (Election)  
High Court of Punjab & Haryana  
Chandigarh

*True Copy*  
*R. K. Singh*  
Examiner

